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#### Contract Database Metadata Elements

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BC / 6816

AGREEMENT

by and between the

NYS PUBLIC EMPLOYMENT  
RELATIONS BOARD  
**RECEIVED**

JUL 12 2007

CITY OF JOHNSTOWN PUBLIC WORKS UNIT

OFFICE OF THE CHAIR

and the

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.  
AFSCME LOCAL 1000, AFL-CIO

FOR THE

CITY OF JOHNSTOWN PUBLIC WORKS UNIT  
FULTON COUNTY LOCAL 818

January 1, 2007 – December 31, 2010

**RECEIVED**

JUL 16 2007

NYS PUBLIC EMPLOYMENT  
RELATIONS BOARD

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## PREAMBLE

THIS AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 2007, BETWEEN THE CITY OF JOHNSTOWN, a Municipal Corporation of the County of Fulton and State of New York, party of the first part, hereinafter designated as 'CITY', and

The CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., AFSCME LOCAL 1000, AFL-CIO for the CITY OF JOHNSTOWN PUBLIC WORKS UNIT of the FULTON COUNTY LOCAL #818.

## WITNESSETH

WHEREAS, the said JOHNSTOWN PUBLIC WORKS UNIT of the Civil Service Employees Association, Inc., AFSCME Local 1000, AFL-CIO, has heretofore been designated as the recognized negotiation representative for all Street Department and Water Department employees, of the City of Johnstown pursuant to Article 14 of the Civil Service Law, and

WHEREAS, the parties have negotiated terms of an employment contract and desire to reduce the same to writing.

NOW, THEREFORE, pursuant to Article 14 of the Civil Service Law, commonly known as the "Taylor Act", and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE I - REPRESENTATION AND RECOGNITION

It is agreed and the City recognizes the CSEA, Inc., as the bargaining agent for all Street Department and Water Department employees, as detailed in Appendix A, Wage Statement, attached hereto and made a part hereof.

Section 1: This recognition shall continue for a period ending seven months prior to the expiration of this Contract pursuant to Section 208 of the Civil Service Law.

Section 2: The CSEA, Inc., shall have exclusive payroll deductions of membership dues and insurance premiums for employees and no other employee organization shall be accorded any such payroll deduction privilege throughout the unchallenged representation. The City shall deduct these membership dues and insurance premiums from the wages of those employees who sign authorization cards permitting such payroll deductions. Such sums shall be transmitted, at least monthly, to CSEA, Inc., 143 Washington Avenue, Albany, New York 12210.

Section 3: The City agrees to deduct from the wages of all agency fee members an Agency Shop Fee in the amount of the dues levied by CSEA, Inc. Such sums shall be transmitted to CSEA, Inc., 143 Washington Avenue, Albany, NY 12210.

Section 4: The Association will indemnify and save the City harmless against any and all claims, demands, suits or other forms of liability that may arise out of or by reasons of action taken or not taken by the City in the reliance upon dues deduction authorization cards furnished by the employees and/ or Association.

## ARTICLE II - TERM

The term of this Contract shall be for a period of four (4) years commencing January 1, 2007 and ending December 31, 2010.

## ARTICLE III - SALARIES

The salaries of the employees of the Public Works Unit are hereby set as shown in Appendix A which is annexed hereto and made a part hereof to become effective January 1, 2007, 2008, 2009 and 2010, respectively.

Bi-weekly Pay: Effective January 1, 2007, and upon three (3) weeks written notice to all employees in the bargaining unit, the City will switch to a bi-weekly payroll..

### Section 1: Longevity

Employees in this bargaining unit shall additionally receive longevity payments in accordance with the following schedule:

In the contract year 2006 and upon completion of:

5 years of continuous service	\$1,100.00
10 years of continuous service	\$1,200.00
15 years of continuous service	\$1,300.00
20 years of continuous service	\$1,400.00

In the contract year 2008 and upon completion of:

5 years of continuous service	\$1,200.00
10 years of continuous service	\$1,300.00
15 years of continuous service	\$1,400.00
20 years of continuous service	\$1,500.00
25 years of continuous service	\$1,600.00

In the contract year 2009 and upon completion of

5 years of continuous service	\$1,300.00
10 years of continuous service	\$1,400.00
15 years of continuous service	\$1,500.00
20 years of continuous service	\$1,600.00
25 years of continuous service	\$1,700.00

In the contract year 2010 and upon completion of

5 years of continuous service	\$1,400.00
10 years of continuous service	\$1,500.00
15 years of continuous service	\$1,600.00
20 years of continuous service	\$1,700.00
25 years of continuous service	\$1,800.00

In computing continuous service, any part of a year shall constitute the first year and, thereafter, computations shall be made on January 1st of each year. Longevity payments are payable by the second pay period in June of each year for which the longevity is earned. Longevity increments continue at the current rates until same may be changed by negotiations.

Probationary or provisional service which, thereafter, becomes a permanent appointment shall count towards continuous service.

#### Section 2: Out-of-Title Work

Employees assigned to work in a higher paying title shall be granted the higher rate of pay for the duration of such assignment after working in the position for a minimum of four (4) hours.

### ARTICLE IV - RETIREMENT

#### Section 1:

All eligible employees of this bargaining unit shall be granted the provisions of the New York State Employees Retirement Plan commonly referred to as "Plan 75i". All other employees shall continue enrollment in the existing Retirement Plan in effect.

#### Section 2:

The City agrees to provide to all employees of this bargaining unit the provisions of what is commonly referred to as "Section 41J" as it relates to the application of up to 165 days of unused, accumulated sick leave for additional retirement credit.

### ARTICLE V - HOLIDAYS

All covered employees of the Public Works Unit shall be entitled to the following ten (10) paid holidays, to wit:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Presidents Day	Veteran's Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Employees shall receive two (2) additional floating holidays in each calendar year. The floating holiday must be used in an eight (8) hour block.

In the event that any of the above holidays fall on a Saturday, said employees shall be entitled to receive the preceding Friday off and if said holidays fall on Sunday, they shall receive the following Monday off.

#### ARTICLE VI - PERSONAL LEAVE

All covered employees are hereby granted five (5) days personal leave annually, to be scheduled by the Head of the Department upon at least 24 hours written notice. The Department Head shall not require an employee to give a reason for which the request is being made unless the request is made within 24 hours.

#### ARTICLE VII - SICK LEAVE

Each employee shall be allowed sick leave credits at the rate of one (1) working day each month. Unused sick leave credit shall not be accumulated to an employee beyond a maximum of two-hundred (200) working days. After this maximum is reached, no more sick credits may be earned by the employee except to the extent of restoring credits subsequently drawn for sick leave and thereby building up accruals again to the two-hundred (200) day maximum.

##### Section 1:

(a) The City may have any employee who is reported sick examined by the City physician or any other physician whom the City may designate. Any employee who shall refuse to be so examined shall be subject to suspension and loss of pay during absence.

(b) Any employee who is out for three consecutive days or more, may be required to provide a doctor's note verifying their illness and indicating that they are ready and able to return to full duty. The expense of this doctor visit will be borne by the employee.

(c) The Department Head, at his discretion, may request that an employee who calls in sick on the day before or after a holiday, or on the day before or after a regularly scheduled day off, to provide a doctor's note verifying his/her illness; such request must be made by the Department Head within three (3) hours of the beginning of the work day on which sick leave was used. If no note is provided following a request, holiday pay or regular pay shall be forfeited.

The City can send the employee to a doctor (if necessary) of the City's choice and either reimburse the co-pay or pay the visit, whichever is applicable.

(d) An employee who has accrued a minimum of fifty (50) sick leave days may elect, at the end of the year, to cash in five (5) sick leave days. This option shall be exercised, if at all, by the second pay period in December.



## Section 2: Right to Worker's Compensation

Employees who are disabled or incur occupational sickness while in the performance of duty, who are entitled to receive Workers' Compensation, may elect either to take sick leave as herein provided, or to take Workers' Compensation. In the event of the election to take sick leave under this Section, then any Workers' Compensation received shall be refunded to the City or credited against sick leave pay.

## Section 3: Actionable Injuries

If an employee entitled to sick leave under this Section is disabled by injury caused by the negligence or wrong of a third party, such employee need not elect whether to take sick leave or to pursue his remedy against such third party, but may take his sick leave under this Section. The City shall have a lien on the proceeds of any recovery from such a third party, whether by judgment, settlement or otherwise, after deduction of reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery, to the extent of the total amount of sick leave provided by this Section and paid, in the same manner as provided for a lien for disability benefits under Section 227 of the Workers' Compensation Law.

## Section 4: Termination of Employment

Sick leave shall not, under any circumstances, be allowed to any employee as a bonus at the time he leaves the employment of the City.

## Section 5: Disability Insurance

The New York State Disability Plan is available to all employees of this bargaining unit at the employee's expense.

# ARTICLE VIII - VACATIONS

## Section 1:

Each employee of the Public Works Unit who has served a full year of service, shall be entitled to the following vacation leave with pay:

<u>Years of Service</u>	<u>Vacation Days Earned</u>
1 year completed	Five (5) days
2 to 4 years completed	Ten (10) days
5 to 10 years completed	Fifteen (15) days
10 or more years completed	Twenty (20) days

All vacation credit must be used in the year in which it is earned. If, due to the City's inability to schedule vacation, an employee does not use his vacation, the affected employee will be paid for the "days worked".

Upon completion of the milestone anniversary dates as indicated above, employees will be credited with an additional five days of vacation time.

**Example:** If an employee completed five full years of service on May 1, 2006, then effective May 1, 2006 an additional five days of vacation will be added to the employee's vacation time to increase the total for the calendar year from ten to fifteen days.

#### Section 2: Vacation Use Notice

The employees must give the City at least twenty-one (21) days written notice of his intention to use his vacation time. The employee must take a minimum of five (5) consecutive days of vacation at any particular time. The City has the absolute right not to grant vacation time to more than twenty percent (20%) of the full time employees at the same time. Three (3) working days written notice to the City is required for requested vacation leave of less than five (5) days, however, the City shall have the absolute right to deny the same.

The City must give reason for denial of vacation time and this will become subject to the grievance procedure.

#### Section 3: Vacation Pay in Advance

Payment for earned and credited vacation may be made to the employees of the City prior to commencement of such vacation provided, however, that request is made at least two weeks in advance to the City Treasurer .

### ARTICLE IX - BEREAVEMENT LEAVE

Employees shall be granted, upon satisfactory evidence of a death in said employee's immediate family, leave with pay not to exceed three (3) working days on account of such death.

#### Section 1: Definition of Immediate Family

The immediate family of an employee shall include grandparents, father, mother, father-in-law, mother-in-law, natural, foster, or step-parent, brother, sister, brother-in-law, sister-in-law, spouse or child of the employee or anyone residing in the household.

#### Section 2: Aunt/Uncle

An employee will be granted one (1) day of bereavement leave for the employee's aunt or uncle where "aunt" or "uncle" is defined as the employee's parents' siblings or step parents' siblings.

## ARTICLE X - HEALTH INSURANCE

### Section 1:

Effective February 1, 1999, the City shall provide the Empire Plan of New York State Health Insurance Program with Rx Program (Cigna/Value Rx). The Empire Plan will be eliminated at such time as a comparable plan is made available through the current carrier.

Employees electing coverage pursuant to the HMO plan MVP will be provided with MVP-10 effective October 15, 1991. Effective January 1, 2005, the MVP Plan will have a doctor visit co-pay of \$15.00; the emergency room visit co-pay will be \$50.00; and the prescription drugs will be \$10.00 for generic, \$30.00 for brand and \$50.00 for non-preferred.

Effective October 18, 2004, Community Blue will have a \$15.00 doctor visit co-pay, a \$50.00 emergency room co-pay and prescription drugs will be \$10/20/40.

In addition to MVP, employees may select from among the following HMO options: Healthflex Now, etc. (if any).

The City will pay the full premium for employees selecting the HMO option unless the HMO premium exceeds the basic plan premium by more than five (5%) percent in which event the employee shall reimburse the City for all amounts of premiums in excess of 105% of the basic plan premiums.

Employees hired on or after January 1, 1995, will contribute twenty (20%) percent of the premium cost for all health benefits (basic health coverage, HMO option, prescription drug coverage) which contribution shall be deducted from the employee's paycheck each pay period on a pro-rated basis. Such contribution shall be for either the family or individual plans.

Employees hired on or after January 1, 1997, will contribute twenty-five (25%) percent of the cost of their respective health insurance premium.

### Section 2:

The employer agrees to maintain all existing health insurance benefits. Should any change in this benefit be proposed by the employer, employees of this bargaining unit shall not suffer any loss of current benefits.

### Section 3: Health Insurance Committee

A Health Insurance Committee shall be established. It shall be made up of two representatives from each union and two from management. Any modifications to health insurance (including any replacement for the Empire Plan) shall be reviewed by this Committee. The Committee's decision on the modification(s) shall be final and binding and not subject to grievance and/or IPC.

#### Section 4:

An employee entitled to health insurance coverage as herein provided may elect to waive coverage if his or her spouse has similar coverage or if the employee has access to other coverage. (See Appendix "C".) Employees waiving such coverage may be required to show proof of spouse's or other coverage to the City and the Union. An employee who desires to waive such coverage shall notify the City and the Union, in writing, and such waiver of coverage shall be effective on the first day of the month following thirty (30) days after the date of receipt of such notification to the City. Employees waiving coverage will receive payment as follows:

\$4,500.00 per year for family coverage waiver.  
\$3,400.00 per year for two-person coverage waiver.  
\$1,700.00 per year for single coverage waiver.

The applicable amount will be paid twice per year by separate check, withholding applicable taxes or deductions, on December 15 and June 15 of each year. If the spouse's or other coverage is terminated for any reason, the employee will immediately notify the City. Upon such notification, the City shall transfer the employee to the health insurance plan selected by the employee without preconditions unless otherwise dictated by the health insurance provider or by law. An employee who has waived his or her health coverage and who desires such coverage to be reinstated shall notify the City and the Union, in writing. Such coverage shall be reinstated on the first day of the month following thirty (30) days after the receipt of such notification by the City.

In the event the employee opts back in after payment of the waiver amount, the employee must return the monies in kind. (See Appendix "C".)

#### Section 5:

Anyone hired after January 18, 2001 will, upon retirement, be entitled to individual coverage. However, said retiree can purchase two-person or family coverage by paying the difference in premium between the fully paid individual and the family or two-person rate calculated at the rate(s) paid by the City.

Any employee hired before January 18, 2001, will receive, upon retirement, health insurance coverage in the same manner, level and plan(s) as provided by the providers to active current employees.

The employee hired before January 18, 2001, can maintain coverage at the family, two-person or individual level ; however, the benefits provided will be the same as those provided to active current employees.

An employee who, at the time of retirement, contributes toward health insurance coverage, will continue to contribute at the same percentage amounts upon retirement as contributed while an

active employee.

In the event the retiree dies, the retiree's spouse can opt to continue health insurance coverage paid exclusively by that spouse but at the City's monthly premium cost.

## ARTICLE XI - DENTAL AND VISION INSURANCE/DEFERRED COMPENSATION

### Section 1: CSEA/EBF - DENTAL INSURANCE

The City agrees to grant all employees of this bargaining unit the provisions of the CSEA Employee Benefit Fund Dental Plan, Family Plan coverage. The cost of this benefit shall be borne by the City.

### Section 2: CSEA/EBF - VISION INSURANCE

The City agrees to grant all employees of this bargaining unit the provisions of the CSEA Employee Benefit Fund Vision Care Plan, Family Plan Coverage. The cost of this benefit shall be borne by the City.

### Section 3: DEFERRED COMPENSATION

The City will provide employees with a Deferred Compensation Plan at no cost to the City.

## ARTICLE XII - CALL-OUT TIME

A. Call-out time for the purpose of this Article shall be time the employee is called from home to come to work and not any extension of the working day. The City shall regulate the number of hours the employees work each day. The employee shall be paid at the rate of one and one-half (1 ½) times the regular rate of pay for the time actually worked; however, the City guarantees a minimum call-out time of two (2) hours. In the event an employee works any part of the next half (½) hour, he shall receive pay for the entire half (½) hour. For example, if an employee works two (2) hours and ten (10) minutes, he shall be deemed to have worked two and one-half (2 ½) hours of call-out time.

B. For the purposes of payroll, a "call-out" will be characterized as an unplanned event that necessitates calling on employees to report to work for duties such as, but not limited to, snow removal, sewer backups, water main breaks, trees down, etc. To clarify, employees called out to work will be compensated from the time of punch in to punch out with a minimum of a two hour period.

C. The call-out work period will be paid for at a rate equal to the overtime rate regardless of the total number of hours worked in the payroll period in which the call-out occurs. Please also note that sick, vacation, and personal time will not affect the pay rate for the call-out period. **Example:** An employee gets called in to work at 2:30 AM to 6:30 AM (when the normal shift begins) and at the regular rate from 6:30 AM to 10:30 AM. However, the employee may be asked to complete the remainder of the normal shift (until 2:30 PM) should the situation warrant.

D. The call-out work cannot be paid out as comp time in the event the call-out period is simply part of a normal 40 hour work week.

### ARTICLE XIII - WORKDAY - WORKWEEK

#### Section 1: HOURS OF WORK

(a) The City will provide a normal work day of 6:30 a.m. - 3:00 p.m. with a one-half hour lunch period and a normal work week of Monday through Friday.

For the construction crew, May 1st to August 31st schedule will be 6:30 a.m. to 2:30 p.m. without lunch.

(b) The Water Department, at its discretion, will provide the Water Meter Reader with flexible work hours of a continuous eight (8) hour duration during the meter reading season.

Section 2: With the exception of emergency situations and overtime, the normal work day shall be from 6:30 a.m. - 3:00 p.m.. The employer shall give one week's notice of any anticipated temporary change in the work day. During off-hour work day winter snow and ice control, employees are expected to report for duty when contacted, punch a time card in, work their 8 hour shift without a lunch break, and punch a time card out at completion of the work.

Section 3: Unless otherwise directed, all employees covered by the terms of this Agreement shall be required to punch a time card at the start and completion of each work day and for any lunch period taken.

### ARTICLE XIV - OVERTIME AND COMPENSATORY TIME

Overtime will be paid Monday through Friday for bargaining unit employees for all hours worked in excess of eight (8) hours per day and forty (40) hours per week at the rate of time and a half or the employees shall have the option of compensatory time. The employee must make an election as to time off or pay at the time the overtime is incurred. Compensatory time off may be accumulated from January until the second pay period in November of each year. The Employer, however, and at its discretion, reserves the right to pay out all accumulated comp time remaining on or after the second pay period in November of each year. Employees may accrue a maximum of sixty (60) hours of compensatory time in any fiscal year. The employee may elect to take a maximum of 36 hours (of the 60 hours) as time off and will be paid for the remaining 24 hours. All unused compensatory time shall be paid to the employees at the end of each fiscal year. Each employee desirous of utilizing compensatory time must give at least three (3) days' written notice to the City. Compensatory time off must be taken in a minimum of four (4) hour blocks. The City reserves the right to require employees to work overtime when reasonably necessary for the efficient performance of municipal services.

Sundays and holidays will be paid at double time. Further, all paid leave status will be considered as time worked for overtime purposes, except sick leave.

## ARTICLE XV - SHIFT DIFFERENTIAL

Section 1: The City shall guarantee a minimum call-out time of two hours for snow and ice removal. The employee shall be compensated for the two hours worked at the rate of one and one-half (1 ½) times his regular rate of pay or shall receive compensatory time off in lieu thereof. The employee must make an election as to time off or pay at the time the overtime is incurred. The Employer, however, and at its discretion, reserves the right to pay out all accumulated comp time remaining on or about December 15 of each year.

Section 2: The City shall pay shift differential of five (5%) percent in addition to employees' regular hourly rate for full shifts worked beyond the normal workday as defined in Article XIII.

Section 3: Shift differential rate will be paid for any full shifts worked differing from the shift defined in the CBA. For example, if a night shift is required for snow removal from 11:00 PM to 7:00 AM, then this work would be paid out at the shift differential rate. Shift differential rates shall apply to planned work shifts.

## ARTICLE XVI - UNIFORM AND CDL ALLOWANCE

### Section 1: Uniform Allowance

The "uniform" will be as directed by the City Engineer or designee. The City agrees to a uniform allowance, effective January 1, 2007, of \$600.00 per year in the following manner:

By the second pay periods of January and July of each year, the City will credit each employee with one-half of the annual allowance.

When bi-weekly pay is first implemented the entire \$600.00 will be paid in one check.

The uniform allowance shall continue at the current rate until same may be changed by negotiations.

### Section 2: CDL Allowance

All employees who maintain a Commercial Driver's License will be reimbursed at time of CDL renewal provided the employee shows proof of renewal prior to receiving the reimbursement..

### Section 3: Drug and Alcohol Policy

The City of Johnstown agrees to adopt any OTETA policy changes that the County and CSEA agree to. See, Appendix "D" hereto.

## ARTICLE XVII – SNOW REMOVAL

Whenever there is a sufficient amount of snow, the employees of the Fire Department may assist (without alleged violation of this Agreement or other union rights) to remove snow around fire houses or necessary fire devices such as fire hydrants; such removal must be by hand, using Fire Department equipment.

## ARTICLE XVIII - JOB POSTINGS

All jobs will be posted at a minimum of seven (7) working days before filling any position. No outside personnel will be hired for a position when permanent staff can fulfill the duties. Only after the permanent staff has been canvassed, can the City go to an outsider.

The Department Head shall consider the operational needs of the Department and such typical but not exhaustive selection criteria as a candidate's time and attendance record, job performance appraisal (when available), disciplinary problems, training, and experience, ability to perform the job duties and responsibilities satisfactorily, and does the candidate meet the established Civil Service minimum qualifications.

When candidates are deemed equally qualified by the Department Head, Department seniority shall prevail and shall be used to break the tie.

Provision of New York State Civil Service Law and Civil Service Rules of the Fulton County Department of Personnel shall govern all appointments to positions in the classified service.

## ARTICLE XIX - JOB SECURITY

### Section 1: Discipline and Discharge

A. An employee covered by this Agreement who has successfully completed his/her probationary period shall utilize the following procedure for disciplinary or discharge matters in lieu and in place of procedures specified in Sections 75, 76 and 77 of the Civil Service Law.

B. Disciplinary action shall include, but is not limited to, written reprimands, suspension, demotion, discharge, fines or any combination thereof or other such penalty as may be proposed by the employer. A notice of such discipline shall be made in writing and served upon the employee with a copy to the Union President or other official designee. The specific acts for which discipline is being proposed and the penalty shall be specified in the notice. An employee must be served with a Notice of Discipline, either personally, or, if the employee is on leave of absence, then by certified mail, return receipt requested to the employee's last known residential address.

C. Pending the outcome of the discipline, an employee may be suspended for thirty (30) calendar days without pay. In the event that the employee is to receive a suspension without pay



pending resolution of the charge, a pre-suspension “notice and opportunity to be heard” will be held to comply with existing case law, which “hearing” will involve the City, the affected employee, and representative of the Union if the employee so elects.

D. (a) If the employee and/or Union disagree with the proposed disciplinary action, the employee and/or Union shall submit a Demand for Arbitration for a binding determination.

(b) Failure to submit written opposition (in the form of a Demand for Arbitration) within ten (10) working days of receipt of the Notice of Discipline will constitute acceptance of the proposed penalty by the employee and the matter will be settled in its entirety.

(c) Both parties agree to use the services of the New York State Public Employment Relations Board in the selection of the arbitrator during the course of the proceedings.

(d) Subject to a mutual written agreement between the employee and/or the Union and the City, the time limits herein above specified may be extended.

(e) The fees and expense of the arbitrator shall be divided equally between the City and the employee or Union, as specified above.

E. An employee shall have the right to be represented in all stages of a disciplinary matter by a Union representative if the employee so elects to do so. Nothing contained herein shall be construed as limiting the right of an employee to informally resolve the disciplinary matter by settlement of the matter with the Mayor, City Engineer and/or designee and the employee may waive his/her rights in writing to the procedure outlined herein. Any settlement agreed upon by the parties shall be reduced to writing and shall be final and binding upon all parties.

F. No disciplinary action shall be commenced by the City more than twelve (12) months after the occurrence of the alleged act(s) for which discipline is being considered; provided, however, that such limitation shall not apply where the act(s) would, if proved in a court of competent jurisdiction, constitute a crime.

G. In any disciplinary matter, the City may utilize an employee’s entire, official personnel file. In that event, the employee will be so notified and have the opportunity to review the file.

Section 2: In the event the operation of the Water Department, or any other functions performed by members of this bargaining unit, ceases to fall under the jurisdiction of the current employer, it is agreed between the parties that all provisions of this Agreement shall remain in full force and effect for such members.

Section 3: In the event of layoff of any permanent, non-competitive and labor class employee(s), said employee(s) will be laid off by seniority and qualifications beginning with the least senior in the job title within the department. Employees who have held another permanent position within the Department for at least one (1) year or more, shall have the right to bump the least senior person in that job title if the bumping employee is senior and more qualified.

Laid off employees shall remain on a recall roster for four (4) years, with the most senior being called back to work first within job title. The most senior employee will be notified of any vacancy by certified mail, return receipt requested. Upon notification of a vacancy to return to work, refusal will remove the employee from the recall roster permanently. Failure to respond to the certified letter within ten (10) working days will cause the employee to be permanently removed from the recall roster. It is the employee's obligation to keep the City informed of any change of address.

#### ARTICLE XX - LABOR / MANAGEMENT COMMITTEE

The parties to this agreement agree to establish a labor/management committee comprised of the President of the CSEA Unit and his designees and the City Engineer and his designee. The purpose of the committee shall be to address matters of mutual concern in order to enhance a positive labor relations atmosphere.

#### ARTICLE XXI - RESOLUTIONS AND ORDINANCES

The City will adopt or amend such Resolutions and Ordinances, if any, that may be necessary to implement the terms of this Contract.

#### ARTICLE XXII - SEVERABILITY

In the event any provision of this Contract is held to violate any laws, such provisions shall not bind the parties, but the remainder of the Contract shall remain in full force and effect, as if the invalid or illegal provision had not been a part of this contract.

#### ARTICLE XXIII - MANAGEMENT RESPONSIBILITY CLAUSE

It is recognized that the management of the Public Works Unit, the control of its properties and the maintenance of order and efficiency, is solely a responsibility of the City. Accordingly, the City retains the rights, including but not limited to, selecting and directing the working forces, including the right to hire, suspend or discharge for just cause, assign, promote or transfer, to determine the amount of overtime to be worked, to relieve employees from duty because of lack of work or for other legitimate reasons; decide the number and location of its facilities, stations, etc., determine the work to be performed within the unit, maintenance and repair, amount of supervision necessary, machinery and tool equipment, methods, schedules of work, together with the selection, procurement, designing, engineering and the control of equipment and materials; purchase services of others, contract or otherwise, except as they may be otherwise specifically limited in this Agreement and to make reasonable and binding rules which shall not be inconsistent with this Contract.

#### ARTICLE XXIV - BAN ON STRIKE

It is recognized that the need for continued and uninterrupted operation of the City's departments and agencies is of paramount importance to the citizens of the community and that there should be no interference with such operation.

Adequate procedures having been provided for the equitable settlement of grievances arising out of this Agreement, parties hereto agree that there will not be and that the Union, its officers, members, agents, or principals will not engage in, encourage, sanction, or suggest strikes, slowdowns, lockouts, mass resignation, mass absenteeism, or other similar action which would involve suspension of or interference with normal performance.

## ARTICLE XXV - GRIEVANCE PROCEDURE

### PREAMBLE

It is the purpose of this procedure to secure at the lowest possible administrative level, equitable solutions to grievance through procedures under which parties may present grievances from coercion, restraint, reprisal.

### SECTION I

#### DEFINITIONS

- A. Employee: Any person(s) covered by this Agreement as provided for under Article 1 - Bargaining Unit Representation and Recognition.
- B. Employer: The City of Johnstown.
- C. Association or Union: The Civil Service Employees Association, Inc., and its representatives.
- D. Grievance: Any claimed violation, misinterpretation, inequitable application, or non-compliance with the provisions of this Agreement or those matters affecting the employees' health or safety relating to materials or equipment furnished to the employees.
- E. Supervisor: The employee on the next higher level of authority above the employee in the department wherein the grievance exists and who normally assigns and supervises the employee's work.
- F. Days: All days other than Saturday, Sunday and holidays which shall be excluded in computing the number of days within which action must be taken or notice given within the terms of this procedure.

## SECTION II

### RIGHTS OF THE PARTIES

#### A. Rights of Grievant

1. The Grievant may select the Unit President or his designee and/or a CSEA staff representative to assist him in the processing and/or preparing of grievances, except that no representative may be present from any employee organization other than CSEA.

2. The Grievant shall have access to all written statements, records, and materials relating to the grievance which is a part of the Grievant's personnel file.

#### B. Rights of the Association

1. The Association shall receive a copy of any written grievance, including supporting materials attached thereto and submitted therewith, and of any decision rendered pursuant to this procedure.

2. The Association shall have the right to submit briefs to support a particular grievance at arbitration.

3. The Association shall have the right to submit a grievance only when the particular grievance affects three or more of the employees of the Public Works Unit.

## SECTION III

### STEP ONE

1. An employee who claims to have a grievance shall present his grievance to the City Engineer in writing within fifteen (15) working days of its occurrence or of when the employee becomes, or should have become, aware of it.

2. The City Engineer shall meet with the parties to resolve the grievance within three days after receipt of the written grievance. After the meeting, he shall render a written decision within five (5) days.

### STEP TWO

The aggrieved party, if not satisfied with the decision at Step One, may within five (5) days after receipt of the Step One decision or within five (5) days of when that decision should have been received, request in writing a meeting before the Mayor or designated representative. The meeting shall be held within fifteen (15) days after it is requested and a decision shall be made within fifteen (15) days thereafter, copies of the decision to the aggrieved party and his representative.

### STEP THREE

In case of grievances concerning the interpretation of this Agreement or breaches or claimed breaches hereof, CSEA may substitute itself for the aggrieved party and appeal an unsatisfactory decision at Step Three in accordance with the rules of the Public Employment Relations Board relating to arbitration. The decision arrived at shall be final and binding upon both parties to the agreement, subject to appeal in accordance with the terms of CPLR Sections 7510 and 7511.

The fees and expenses of the arbitration shall be borne equally by the parties.

The arbitrator shall hold a hearing within twenty days after he has been selected and should render a decision within twenty days after the hearing has been concluded.

The arbitrator shall have no power to add to, subtract from or change any of the provisions of this Agreement, not to render any decision which contravenes established law, regulation or ordinance or beyond the date the employee became or should have become aware of the grievance except when the grievance involves cash pay earned but not received.

### GENERAL CONSIDERATIONS

1. All grievance discussions, meetings conferences and hearings shall be conducted as much as possible during the normal work day.
2. The time limits at any step may be extended by written mutual consent of the parties.

### ARTICLE XXVI - UNION LEAVE

The City agrees that CSEA Unit Representatives designated for Union training and organizational functions, shall be permitted time off with pay not to exceed a total of three (3) working days per year, provided, however, that the Union must give the City two (2) weeks prior written notice of a request to utilize this leave time.

### ARTICLE XXVII - PROCEDURES FOR DUE PROCESS HEARING


Where, because of statutory mandate or judicially imposed mandate, the Employer is required to hold a due process hearing, the procedure utilized by the Employer shall be as follows:

The Employer may appoint a hearing officer who shall have the authority to receive testimony and evidence, issue subpoenas and issue an opinion and award. The award may be appealed by the employer or the employee pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York. Such hearing officer may be City employee provided such employee is unrelated to the case. This Article shall not apply to administrative matters including, but not limited to grievances and arbitrations.

"IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFORE, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL."

IN WITNESS WHEREOF, this agreement has been executed by the duly authorized officers or representatives of the parties the day and year first above mentioned.

CITY OF JOHNSTOWN

/s/   
Sarah J. Stingerland  
Mayor

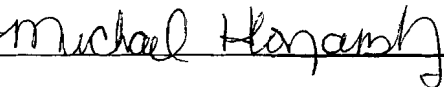
/s/ 

Water Board President

CSEA, INC., AFSCME LOCAL 1000

/s/ 

CSEA Unit President

/s/ 

STATE OF NEW YORK )  
COUNTY OF FULTON ) SS.:  
CITY OF JOHNSTOWN )

On this 1st day of May 2007 before me the subscriber, personally came Mayor Sarah Slingerland, who being by me duly sworn, did depose and say that she resides in the City of Johnstown, New York; that he is the Mayor of the City of Johnstown, the corporation described herein and which executed the within instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Aldermen of said corporation and that he signed his name thereto by like order.

/s/

*Victoria B. Nellis*

Notary Public

State of New York

STATE OF NEW YORK )  
COUNTY OF FULTON ) SS.:  
CITY OF JOHNSTOWN )

**VICTORIA B. NELLIS**  
Notary Public State of New York  
Qualified in Montgomery County  
Commission Expires February 18, 2010

On this 1st day of May 2007 before me the subscriber personally appeared Michael Hlozansky, who, being by me duly sworn, did depose and say that he is the President of the CITY OF JOHNSTOWN UNIT OF CSEA LOCAL #810, INC., LOCAL 1000, AFSCME, AFL-CIO, the Association described in and which executed the foregoing instrument; and that he executed this instrument pursuant to the authority given him by the members of the Association.

/s/

*Victoria B. Nellis*

Notary Public

State of New York

**VICTORIA B. NELLIS**  
Notary Public State of New York  
Qualified in Montgomery County  
Commission Expires February 18, 2010

**APPENDIX A**  
**CITY OF JOHNSTOWN**  
**CSEA**  
**SALARY SCHEDULE**

<u>TITLE</u>	<u>3.0% PLUS INCREMENT ADJUSTMENTS 2007</u>	<u>3.0% PLUS INCREMENT ADJUSTMENTS 2008</u>	<u>3.0% PLUS INCREMENT ADJUSTMENTS 2009</u>	<u>3.0% INCREASE 2010</u>
Water Plant Operator (3)	\$18.00	\$18.69	\$19.35	\$19.93
Equipment Maintenance Supervisor (1)	\$18.00	\$18.69	\$19.35	\$19.93
Working Supervisor	\$18.00	\$18.69	\$19.35	\$19.93
Water Meter Reader (5)	\$17.44	\$17.96	\$18.50	\$19.06
Water Meter Reader (6)	\$16.25	\$16.84	\$17.39	\$17.91
Mason	\$16.69	\$17.24	\$17.81	\$18.34
Auto Mechanic (1)	\$16.60	\$17.20	\$17.81	\$18.34
Heavy Equipment Operator	\$16.66	\$17.31	\$17.88	\$18.42
Maintenance Mechanic	\$16.66	\$17.31	\$17.88	\$18.42
Motor Equipment Operator	\$16.25	\$16.84	\$17.39	\$17.91
Laborer/Driver	\$16.00	\$16.53	\$17.03	\$17.54
Laborer - Step 3 (2) (7)	\$15.94	\$16.42	\$16.91	\$17.42
Laborer - Step 3 (2) (8)	\$14.00	\$14.70	\$15.43	\$15.89
Laborer - Step 2 (2) (7)	\$15.73	\$16.20	\$16.68	\$17.18
Laborer - Step 2 (2) (8)	\$12.00	\$12.30	\$12.61	\$12.99
Laborer - Step 1 (2) (8)	\$10.50	\$10.82	\$11.14	\$11.47

**NOTES**

- (1) Any Equipment Maintenance Supervisor or Auto Mechanic who possesses a current motor vehicle inspection license shall receive an annual stipend of \$500.00, paid on the anniversary date of being granted the license.
- (2) Employees hired as "Laborer" shall be hired at Step 1, and upon completion of one year of service (anniversary date) shall move to Step 2 of the schedule; an employee will move to Step 3 upon completion of one year in Step 2.
- (3) Effective January 1, 1999, a "1A" Water License holder will receive annually a \$500.00 stipend for having said license. This will increase to \$750.00 effective January 1, 2002.
- (4) Effective January 1, 2005 the position of Assistant Water Plant Operator will be abolished and a second Water Plant Operator position shall be created at the hourly rate of \$16.10 before wage adjustments as indicated above.
- (5) This schedule applies to employees appointed to the Meter Reader title prior to January 1, 2007.
- (6) This schedule applies to employees appointed to the Meter Reader title on or after January 1, 2007.
- (7) This schedule applies to employees appointed to the Laborer title prior to January 1, 2007.
- (8) This schedule applies to employees appointed to the Laborer title on or after January 1, 2007.



## APPENDIX B

### FAMILY AND MEDICAL LEAVE OF ABSENCE POLICY

#### Section 1.     PURPOSE

To outline the conditions and procedures under which an employee may be eligible for time off for a limited period, as required by the federally enacted Family and Medical Leave Act ("FMLA").

#### Section 2.     DEFINITIONS

A. "Family and/or medical leave of absence" shall be defined as an approved absence available to eligible employees for up to twelve (12) weeks of leave per year under particular circumstances. Leave may be taken:

- \* Upon the birth of the employee's child;
- \* Upon placement of a child with the employee for adoption or foster care;
- \* When the employee is needed to care for a child, spouse or parent who has a serious health condition;

or,

- \* When the employee is unable to perform the functions of his/her position because of a serious health condition.

NOTE: That an employee's entitlement to leave for the birth, adoption or placement for foster care expires at the end of the twelve (12) month period beginning on the date of birth or placement unless the employer permits a longer time.

B. "A serious health condition" will be defined as any illness, injury, impairment or physical or mental condition that involves (but may not be limited to ) the following:

1. any period of incapacity or treatment in connection with, or following inpatient care in a hospital, hospice or residential medical care facility;

or,

2. any period of incapacity that requires absence from regular daily activities of more than three (3) days and that involves continuing treatment by ( or under supervision of) a health care provider.

C. "Leave" time may be paid or unpaid, see discussion below.

#### Section 3.     RESPONSIBILITY

Each department head is responsible for ensuring that this policy is communicated to the employees. Questions regarding the intent and interpretation of this policy shall be directed to the Employer.

#### Section 4.     SCOPE

The provisions of this policy shall apply to all covered family and medical leaves of absence for any part of the twelve (12) weeks of leave to which the employee may be entitled.

## Section 5. ELIGIBILITY

To be eligible or leave under this policy, an employee must have been employed for at least twelve (12) months and must have worked at least 1,250 hours during the twelve (12) month period immediately preceding the commencement of the leave.

## Section 6. LEAVE OF ABSENCE: PAID OR UNPAID

A. For the adoption, or birth or care of child, parent or of a spouse, an eligible employee must use accrued vacation, personal leave and sick time.

B. for an eligible employee's own serious health condition, the employee must use all accrued leave time, including accrued sick leave.

C. In the event the eligible employee has no accrued leave to his / her credit, the leave provided under this policy will be unpaid.

## Section 7. EXTENSION OF LEAVE

In the event an employee requires leave in excess of the twelve (12) week maximum described herein, the department head, at the department head's discretion, may provide additional leave. The employee will be responsible for their medical coverage during any extended leave.

## Section 8. PERMISSION AND DOCUMENTATION

A. the Employer will require medical certification to support a claim for leave for an employee's own serious health condition or to care for a seriously ill child, spouse or parent. For the employee's own medical leave, the certification must include a statement that the employee is unable to perform the functions of his/ her position. For a leave to care for a seriously ill child, spouse or parent, the certification must include an estimate of the amount of time the employee is needed to provide care. The employer may require a second medical opinion and obtain periodic recertification (at its own expense) only when the employer has reason to doubt the initial medical certification. If the first and second opinions differ, the Employer, at its own expense, may require the binding opinion of a third health care provider, approved jointly by the employer and the employee.

B. If medically necessary for a serious health condition of the employee or his/her spouse, child or parent, leave may be taken on an intermittent basis. Intermittent leaves are not permitted for birth or adoption, unless otherwise agreed upon by the parties.

C. Spouses who are both employed by the Employer, are entitled to a total of twelve (12) weeks of leave (rather than twelve (12) weeks each) for the birth or adoption of a child or for the care of a sick parent.

## Section 9. NOTIFICATION AND REPORTING REQUIREMENTS

A. When the need for leave is foreseeable, such as the birth or adoption of a child, or

planned medical treatment, the employee must provide reasonable prior notice, and make efforts to schedule leave so as not to disrupt operations of the employer. In cases of illness, the employee will be required to report periodically on his / her leave status and intention to return to work.

B. The term “reasonable prior notice” shall mean “ not less than thirty (30) days notice or as soon as practicable.”

#### Section 10. COVERAGE

A. Family leaves may be granted for up to twelve (12) weeks during any twelve (12) month period.

B. The Employer may deny reinstatement to an employee who fails to produce a “fitness - for- duty” certification to return to work. This requirement applies only where the reason for the leave of absence was the employee’s own serious health condition.

C. Employees on authorized family leaves will be covered for those medical, dental, and other health insurance benefits (with the exclusion of any employee contributions, which must begin prior to family leave) under which they were covered prior to their leave.

D. In the event that an employee elects not to return to work upon completion of an approved unpaid leave of absence and the employee so notifies the employer, the employer may recover from the employee the cost of the premium paid to maintain the employee’s health insurance coverage, except when the family and medical leave is paid.

#### Section 11. PROCEDURES

A. In the event the employee is requesting a Family and Medical Leave of Absence, a letter notice must be completed in detail, signed by the employee, submitted to the department head, and forwarded to the Office of the City Attorney for approval with copies to the City Treasurer. If possible, the notice should be submitted thirty (30) days in advance of the effective date of the leave.

B. All family and medical leaves of absence due to illness will include the following information:

Sufficient medical certification stating:

1. the date on which the serious health condition commenced;
2. the probable duration of the condition; and,
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition.

C. In addition, for purposes of leave to care for a child, spouse, or parent, the medical certification should give an estimate of the amount of time that the employee is needed to provide such care.

D. For purposes of leave for an employee's own illness, the medical certification must state that the employee is unable to perform the essential functions of his / her position.

E. In the case of certification for intermittent leave for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment must be stated.

F. FMLA leave must be designated by the Employer where the Employer has knowledge or sufficient reason to believe that the employee is eligible for such leave.

Section 12.                      RETURN TO DUTY

An employee returning from leave as covered by this policy is entitled to the same position held when leave began.

Section 13.                      EFFECT OF LABOR AGREEMENT

It is the intent of the employer to provide the standards as articulated in the Federal FMLA as detailed herein.

Section 14.                      CHANGE IN POLICY

The City reserves the right to modify this policy as necessitated by law.

APPENDIX C

CITY OF JOHNSTOWN

Health Insurance Notice of Buyout

Employee Name: \_\_\_\_\_

Employee # \_\_\_\_\_

Address: \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_

Dept./Bur. \_\_\_\_\_

Present City Insurance Plan: \_\_\_\_\_

Type of Coverage: (Circle one) Single    2-Person    Family

Spouse's Name: \_\_\_\_\_

Employer: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Present Health Insurance Plan: (attach proof of coverage) \_\_\_\_\_

Type of Coverage: (Circle one) Single    2-Person    Family

1. I understand that I am eligible to receive health insurance benefits from the City of Johnstown according to the terms of my union's contract with the City.

2. In consideration of the sum of \$ \_\_\_\_\_, to be paid to me in two equal installments, on June 15 and December 15, in arrears, I agree to waive any and all rights I may have for health insurance coverage from the City of Johnstown for the calendar year \_\_\_\_\_.

3. I affirmatively represent to the City that my spouse's health insurance coverage or my alternate coverage is in full force and effect and that I am now covered under that plan of insurance. A copy of a certification of coverage from my spouse's health insurance carrier or my alternate coverage is annexed hereto.

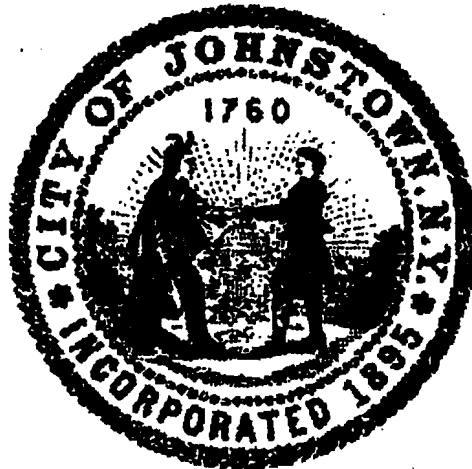
4. I presently know of no condition or circumstance by which my spouse's or alternate health insurance carrier would deny me coverage (e.g. divorce, pre-existing condition, etc.).

5. I understand that the City of Johnstown will have no responsibility for medical expenses incurred by me or members of my family during the period covered by this agreement.

6. In the event that my spouse's insurance or my alternate insurance coverage is terminated, for any reason, I agree to notify the City of Johnstown, City Treasurer's Office, in order to restore my health insurance coverage as soon as possible under the terms of the plan. In such event, my bi-annual payments shall cease and I will not receive a pro rata payment.

APPENDIX D

# CITY OF JOHNSTOWN



**COMMERCIAL DRIVER'S LICENSE (CDL)**

## **DRUG & ALCOHOL TESTING POLICY**

Effective January 1, 1996

Revised March, 1997

Adopted by the Johnstown Common Council

Resolution 87, November 20, 1995

This Drug & Alcohol Testing Policy  
is issued pursuant to the  
Omnibus Transportation Employee Testing Act of 1991  
and the regulations issued thereunder.

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**1. PURPOSE:**

The purpose of this policy is to outline the City of Johnstown's policy regarding federal law and rules governing drug and alcohol testing for employees in safety sensitive jobs. As an employer, the City of Johnstown maintains a strong commitment to provide a safe, efficient work environment for its employees and the public they serve. This policy is consistent with the Federal Drug Free Work Place Act of 1989, and the 1991 Omnibus Transportation Employee Testing Act (OTETA). It is the intent of this policy to assure compliance with Federal and State law and regulations regarding drug and alcohol testing of employees. As a result of enactment of OTETA, the Federal Highway Administration (FHWA) instituted rules that mandate alcohol and drug testing for employees in positions requiring a Commercial Drivers License (CDL) and defined as safety sensitive. These rules, which become effective January 1, 1996 for City of Johnstown employees, require pre-employment, reasonable suspicion, post-accident, random, follow-up, and return-to-duty drug and alcohol testing.

**2. PROGRAM REQUIREMENTS:**

**A. Employees Subject to Testing**

FHWA rules provide the safety sensitive employees who operate vehicles requiring a CDL must be subject to drug and alcohol testing. A CDL is required of any person who operates a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act.

Examples of positions deemed to require a CDL include bus drivers, drivers of trucks over 26,000 GVWR, and snowplow drivers.

**B. Participation as a Condition of Employment**

All employees in, or applicants for, positions defined as safety-sensitive in Section II A above must participate in the drug and alcohol testing program prescribed by FHWA rules as a condition of employment. Failure to participate and comply with program requirements may result in disciplinary action up to and including termination of employment.

**C. Prohibited Behavior**

It is the policy of the City of Johnstown that:

1. No employee shall use, sell, distribute, dispense, possess, or manufacture any alcoholic beverages or illegal drugs or any other intoxicating substance on a job site, or City property while on duty; or while in a City vehicle, a vehicle leased for City business, or a privately owned vehicle being used for City business during the employee's work hours.

2. No employee shall report to work unfit for duty at the beginning of a shift or upon returning from any break, lunch or rest period, as a result of consuming alcohol, illegal drugs, or other intoxicant. Further, no employee notified of being in a safety-sensitive position as defined by the Omnibus Transportation Act of 1991 and FHWA rules shall report to work in a condition that violates that Act and the corresponding rules.
3. Effective January 1, 1996, an employee in a safety-sensitive position is further prohibited from the use of alcohol four hours prior to performing safety-sensitive functions. No supervisor having knowledge that an employee in such a position has used alcohol within four hours shall permit that employee to perform safety-sensitive functions.
4. In some cases, the use of prescription or over-the-counter drugs may cause impairment which prohibits the employee from performing safety-sensitive functions. It is the responsibility of an employee on prescription or over-the-counter medication which may impair performance to consult with his/her physician or pharmacist regarding its effects and to inform his/her supervisor if he/she may be impaired. An employee may be required to have his/her physician certify that medication does/does not adversely affect the employee's fitness for duty.
5. Violation of these rules may result in disciplinary action up to and including termination of employment.

**D. Circumstances for Testing**

FHWA rules require that drug and alcohol tests be given to safety-sensitive employees in specific circumstances pre-employment (drugs only), reasonable suspicion, post-accident, random, return to duty, and follow-up. In order for employees to recognize the circumstances which may initiate these tests, the following definitions are provided:

1. **Pre-employment Testing:** The FHWA rules require that all applicants for employment in positions requiring a CDL or individuals being transferred into such positions must be given a pre-employment drug test. Applicants may not be hired or assigned to a safety-sensitive function unless they complete and pass the test. Prior to conducting the test, departments must inform the applicant or employee of the testing requirements. Vacancy announcements and job postings must stipulate that passing a drug test is a condition of employment. Further, applicants may be required to sign a document acknowledging that they know they are subject to testing.
2. **Reasonable Suspicion Testing:** The FHWA rules require that an employee in a safety-sensitive position must be directed to undergo alcohol or drug testing when the supervisor has reasonable suspicion to believe that the employee has used a prohibited drug or has misused alcohol in violation of OTETA and FHWA regulations. The request to undergo a reasonable suspicion test must be based on specific, contemporaneous, articulable, reliable observations concerning the appearance, behavior, speech, or body odor of the employee.



3. **Post-Accident Testing:** The FHWA rules provide that as soon as practicable following an accident, tests for alcohol and controlled substances shall be administered to employees performing safety-sensitive functions, if the accident involved the loss of human life or the driver receives a citation under State or local law for a moving traffic violation arising from the accident. Drug tests must be performed within thirty-two hours following the accident. Alcohol tests must be performed within eight hours. If an alcohol test is not administered within two hours following the accident, the department must still attempt to administer the test, and must also prepare and maintain a record stating the reason(s) the test was not promptly administered. If an alcohol test is still not administered within eight hours following the accident, the department shall cease attempts to administer an alcohol test and shall maintain the same record.

A safety-sensitive employee shall not use alcohol for eight hours following an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first.

The requirement to test for alcohol and drugs following an accident shall in no way delay necessary medical attention for injured people or prohibit a safety-sensitive employee from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care. However, an employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing.

4. **Random Testing:** The FHWA rules require that safety-sensitive employees be subject to random drug and alcohol testing. The selection of employees for random alcohol and drug testing shall be made by a scientifically valid random-number selection method. The selection process shall assure that each employee shall have an equal chance of being tested each time selections are made. Selection shall be determined by the third-party organization employed to administer the alcohol and drug testing program.

The minimum annual percentage for random alcohol testing shall be 25% of the average number of subject positions.

The minimum annual percentage for random drug testing shall be 50% of the average number of subject positions.

The test dates shall be spread reasonably throughout the year with no established pattern. Testing will be unannounced as well as random.

Once the employee has been notified that he/she has been selected for random testing, the employee shall report immediately to the collection site. Employees shall be individually and discretely notified to report to the collection site and they shall be assured that they have been selected for a routine test. Schedules shall be adjusted

so that additional personnel may be available to substitute for employees being tested.

5. **Return to Duty Testing:** Before any employee is allowed to return to duty to perform a safety-sensitive function following a verified positive drug test result, an alcohol result of 0.04 or greater, or a refusal to submit to a test, that employee must undergo a return to duty test. The return to duty alcohol test result must indicate an alcohol concentration of less than 0.02. The return-to-duty drug test result must indicate a verified, negative result for controlled substance use.
6. **Follow-up Testing:** Once allowed to return to duty, an employee shall be subject to unannounced follow-up testing for at least twelve, but not more than sixty months. The frequency and duration of the follow-up testing will be recommended by a substance abuse professional (SAP) as long as a minimum of six tests are performed during the first twelve months after the employee has returned to duty. Employees subject to follow-up testing must also remain in the standard random pool.

**E. Behavior that Constitutes a Refusal to Submit to a Test**

The following actions or behaviors shall constitute a refusal to submit to a required test:

1. Refusal to take the test.
2. Inability to provide a sufficient quantities of breath or urine to be tested without a valid medical explanation.
3. Tampering with or attempting to adulterate the specimen or collection procedure.
4. Failure to report to the collection site in the time allotted.
5. Failure to remain readily available for post-accident testing for eight hours or until the employee undergoes testing, whichever occurs first.

**F. Testing Procedures**

1. **Drug Testing:** Drug testing is conducted by analyzing the employee's urine specimen. Specimens are collected in an off-site facility which must meet the "Procedures for Transportation Drug and Alcohol Program" (49 CFR, Part 40) requirements to assure privacy and the integrity of specimen collection. The employee provides a urine specimen, which is sealed and labeled by an authorized agent of the testing organization. A chain of custody document is completed and the specimen is shipped to a certified laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification, and integrity are not compromised.

The OTETA requires that drug testing procedures for safety-sensitive employees include split specimen techniques. Each urine specimen is sub-divided into two containers labeled as primary and split specimens. Both specimens are forwarded to a laboratory certified by the U.S. Department of Health and Human Services (DHHS). Only the primary specimen is used in the urinalysis. The split specimen remains sealed and stored unless, and until, it is required for confirmation of a positive test. An initial screening test is performed. If the test is positive for one or

more drugs, a confirmation test is performed for each identified drug using gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications are not reported as positive results.

If the analysis of the primary specimen confirms the presence of controlled substances, the employee has seventy-two hours to request that the split specimen be sent to another DHHS certified laboratory for analysis. The split specimen procedures provides the employee with an opportunity for a second opinion.

All drug test results are reviewed and interpreted by a physician, Medical Review Officer (MRO), before they are reported. If the laboratory reports a positive result to the MRO, the MRO contacts the employee and conducts an interview to determine if there is an alternative medical explanation for the presence of a controlled substance in the specimen.

If the employee provides appropriate documentation and the MRO determines that there is a legitimate medical use of the prohibited drug, the test result is reported as negative.

Urine specimens are analyzed for the following drugs:

- Marijuana (THC metabolite)
- Cocaine
- Amphetamines
- Opiates (including heroin)
- Phencyclidine (PCP)

2. **Alcohol Testing:** FHWA rules provide that alcohol testing is conducted using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). The breath test must be performed by a Breath Alcohol Technician (BAT) trained in the operation of the EBT and in the alcohol testing procedures prescribed by the rules.

Two breath tests are required to determine if a person has a prohibited alcohol concentration. Any result from the screening test is considered negative if the alcohol concentration is less than 0.02. If the alcohol concentration is 0.02 or greater, a confirmation test must be conducted. The employee and the BAT complete the alcohol testing form to ensure that results are properly recorded. The confirmation test must be conducted using an EBT that prints the results, date, time, in sequential test numbers, and the name and serial number of the EBT to ensure the reliability of the results.

The EBT shall be conducted by BAT's employed by a drug and alcohol testing organization under contract by the City of Johnstown. Agents of the City of Johnstown or any of its departments shall not perform the breath alcohol test. Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable.

3. **Confidentiality of Test Results:** Employee alcohol and drug testing results and records are maintained under strict confidentiality by the City of Johnstown, the drug

testing laboratory, the alcohol testing facility, and the medical review officer. The results cannot be released to any other party except a substance abuse professional without the written consent of the employee. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation, or administrative proceedings arising from a positive drug test or other violation of these rules. Statistical records and reports are maintained by the City of Johnstown and/or the alcohol and drug testing provider. This information is aggregate data and is used only to monitor compliance with the FHWA rules.

**G. Consequences of the Use of Drugs and the Misuse of Alcohol**

1. **Consequences of Alcohol Misuse:** Employees who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. The following circumstances constitute prohibited behaviors.
  - a. Employee has an alcohol concentration of 0.02 or greater, but less than 0.04, as determined by EBT results, when tested just before, during or just after performing safety-sensitive functions.
  - b. Employee has used alcohol within four hours of performing safety-sensitive functions.
  - c. Employee has used alcohol while performing safety-sensitive functions.
  - d. Employee has used alcohol during the eight hours following an accident or until the employee has undergone a post-accident alcohol test.
  - e. Employee refused to submit to a required alcohol test (as defined in Section II., E.).
  - f. Employee has an alcohol concentration of 0.04 or greater, as determined by EBT results, when tested just before, during or just after performing safety-sensitive functions.

Employee found to have violated any provision of G, 1, a-f shall be immediately suspended from duty for twenty-four hours, and subject to the disciplinary procedure outlined in Appendix A, Section 9, up to and including termination of employment.

No employee who has engaged in any prohibited alcohol conduct as defined in section G, 1, b-f, shall be allowed to perform safety-sensitive functions until the employee has been evaluated by a substance abuse professional. Before an employee returns to duty performing a safety-sensitive function, the employee must undergo a return-to-duty alcohol test with a result indicating alcohol concentration of less than 0.02.

2. **Consequences of Use of Drugs:** An employee who has a verified positive drug test result must be immediately suspended from duty. The employee who has a verified positive drug test result shall not be allowed to perform safety-sensitive functions until the employee has been evaluated by a substance abuse professional. Before an employee returns to duty performing a safety-sensitive function, the employee must undergo a return-to-duty substance test with a verified negative result.

An employee who has an initial verified positive drug test result will be subject to the disciplinary procedure outlined in Appendix A, Section 9, up to and including termination of employment.

3. **Refusal to Submit to a Required Alcohol or Drug Test** (as defined in Sec. 11, E): Refusal or failure to submit to a required alcohol or drug test constitutes a failed test, resulting in immediate removal from duty and appropriate disciplinary action as prescribed under Section G 1, and 2. The employee may not return to safety-sensitive duty until he or she has undergone return-to-duty testing with verified negative results. The employee shall be subject to the provision for follow-up testing as defined in Section 11, D, 6.

E. **Training for Supervisors**

The City of Johnstown shall ensure that all supervisors and other persons designated to determine whether reasonable suspicion exist to require an employee to undergo testing must receive training on alcohol misuse and training on controlled substances use. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

The training shall include an overview of the program requirements, disciplinary procedures, confrontation and documentation procedures, and rehabilitation and treatment options which are available.

F. **Training for Safety-Sensitive Employees**

The City of Johnstown shall ensure that all employees performing job functions deemed safety-sensitive shall be trained on the effects and consequences of prohibited drug use on personal health, safety, and the work environment as well as the manifestations and behavioral signs that may indicate prohibited use.

G. **Supervisory Responsibilities**

It is the policy of the City of Johnstown that:

1. Supervisors are responsible for determining through direct observation whether an employee is capable of performing his or her assigned duties. Determinations shall be based on specific, contemporaneous, articulable, reliable observations concerning the appearance, behavior, speech, or body odor of the employee.
2. Employees who are suspected of being unfit for duty as a result of alcohol or drug use should be required to undergo reasonable suspicion drug and/or alcohol testing in accordance with FHWA rules and this policy. Supervisors should immediately bring their observations to the attention of the Department Head or designee in order that arrangements for testing can be implemented as soon as practicable.

H. **Management Responsibilities**

It is the policy of the City of Johnstown that:

1. A drug and alcohol-free work place shall be maintained through the efforts and personal example of management.

2. Subordinate managers and supervisors who fail to perform their duties and responsibilities as outlined in this policy will be subject to disciplinary action up to and including termination of employment.
3. Managers and supervisors are encouraged to discuss with employees any behavior or job performance factors that may indicate the use of drugs, alcohol, or other violations of this policy and to suggest, when appropriate, that employees seek assistance through the Employee Assistance Program (EAP).
4. Effective January 1, 1996, managers shall direct employees in designated, safety-sensitive positions to comply with the provision for pre-employment, reasonable suspicion, random, post-accident, return-to-duty, and follow-up testing in accordance with the FHWA rules.
5. Supervisors who make reasonable suspicion determination must receive training on the physical, behavioral, and performance indicators of probable drug use and alcohol misuse. Supervisors shall be instructed on the principle of the "reasonable, prudent individual" in reasonable suspicion decisions.

**L. Employee Assistance Program (EAP)**

The City of Johnstown Employee Assistance Program is a confidential voluntary service available to all employees and their family members. The EAP was created with the aim to assist employees and their families in maintaining their health and well-being. Additional information on the City of Johnstown EAP Program can be obtained from the County Personnel Department.

**M. Miscellaneous Information**

Appendix A attached to this document is the City of Johnstown's CDL Drug & Alcohol Testing Procedure.

Appendix B attached to this document identifies personnel and organizations responsible for administering this plan.

Appendix C is the Acknowledgment Form which must be completed by each covered employee and placed in his or her personnel file.

**APPENDIX A**  
**CITY OF JOHNSTOWN**  
**COMMERCIAL DRIVER'S LICENSE (CDL)**  
**DRUG & ALCOHOL TESTING PROCEDURE**

**SECTION 1.**      **FEDERAL HIGHWAY ADMINISTRATION (FHWA) REGULATIONS:**

The Employer's drug and alcohol testing program shall be governed by and in compliance with the FHWA regulations applicable to the employer. All holders of a Commercial Driver's License are subject to these regulations.

**SECTION 2.**      **NOTICE REQUIREMENTS:**

Prior to the implementation of the testing program, the employer shall provide each covered employee and the union with a copy of a Drug & Alcohol Testing Policy, which conforms with the requirements of the regulations.

**SECTION 3.**      **PROHIBITED CONDUCT:**

Any violation of the FHWA regulations by an employee will be considered prohibited conduct.

No employee shall use, sell, possess, distribute, or manufacture any alcoholic beverage or illegal drug or any other intoxicating substance at any time on the job site or on employer property; or while in an employer vehicle, a vehicle leased for employer business, or a privately owned vehicle being used for employer business during the employees work hours.

No employee shall use illegal drugs at any time.

No employee shall report to work at the beginning of a shift or upon returning from any break, lunch or rest period under the influence of alcohol, illegal drugs or other intoxicating substance. No employee shall report for duty or remain on duty requiring the performance of their job duties when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle.

No employee shall possess alcohol during working hours unless the alcohol is manifested and transported as part of a shipment, perform their job duties within four (4) hours after using alcohol, or use alcohol for eight (8) hours following an accident or until the employee undergoes a post-accident test, whichever occurs first.

**SECTION 4.**      **TESTING PROCEDURES:**

Testing for alcohol and prohibited drugs shall be conducted according to the procedures specified in the Drug and Alcohol Testing Policy provided by the employer in conjunction with the FHWA regulations. The circumstances under which an employee will be tested are (1) pre-employment (drugs only), (2) post-accident; (3) randomly; (4) reasonable suspicion; and (5) return-to-duty.

An employee shall be paid for all time pertaining to an alcohol or drug test, with the exception of return-to-duty and follow-up testing, including providing a urine or breath sample and travel time to and from the test site. Such time shall be considered as time worked for the purpose of computing overtime. However, an employee will not be paid for time spent meeting with the Medical Review Officer; or, once a positive test result has been reported to the employer, for time spent with an Employee Assistance Representative or seeking treatment for substance abuse.

An employee who requests that a sample be retested must pay for the retesting. If the retesting results in a negative test, the employer will reimburse the employee for the cost of the retesting.

The Drug/Alcohol Program Manager (DAPM) shall be responsible for reviewing the results of all alcohol and drug tests.

#### **SECTION 5.      RANDOM TESTING:**

The employer shall administer both alcohol and drug tests to each employee who is selected for random testing within five working days of notification.

The minimum annual percentage rate for alcohol testing shall be 25 percent of the number of subject positions, while the drug testing rate shall be 50 percent of the number of subject positions.

#### **SECTION 6.      REASONABLE SUSPICION TESTING:**

Whenever a Department Head or his designee finds that available facts objectively indicate that reasonable suspicion exists that a test of the employee would yield a positive result for the use of alcohol or drugs, and as soon as practicable after an order to test is given, without causing a delay in the testing process, the employer shall document the facts contributing to and forming the basis for the reasonable suspicion. These facts shall include: (1) a description of the employee's appearance, behavior and speech; (2) names of witnesses to the employee's appearance, behavior and speech- (3) if the employee's appearance, behavior or speech is not the basis for the testing, the facts used to support a determination of reasonable suspicion and the source of the information.

When a decision is made to test, the Department Head or designee should notify the employee of this decision, and at that point the employee must comply with the drug and alcohol testing procedures. The failure to comply with the procedures, in any respect, or a refusal to take a test will be treated as a positive test result.

#### **SECTION 7.      CONSEQUENCES OF A POSITIVE TEST:**

An employee who has tested positive for alcohol or drug use shall be immediately suspended from employment, as provided in Section 9 below. Prior to being suspended, the employee shall be given a brief verbal explanation of the charges against them and a brief opportunity to respond to these charges.

Whenever an employee is found to have an alcohol concentration of 0.04 or greater, the test is considered positive.



**SECTION 8. REFERRAL, EVALUATION AND TREATMENT:**

Prior to returning to duty, an employee who tested positive must be evaluated by a Substance Abuse Professional (SAP), complete his or her period of suspension, and must undergo and receive a negative return-to-duty test for alcohol and/or drugs. In addition, each employee identified by a SAP as needing assistance in resolving problems associated with alcohol or drugs (1) shall be evaluated by a SAP to determine whether the employee has properly followed any rehabilitation program prescribed by a SAP and (2) shall be subject to follow-up testing in accordance with the regulations. The final decision as to whether to permit an employee to return to full duties in the employee's position shall be made by the employer after consultation with the SAP.

An employee who is granted a leave of absence to seek treatment for substance abuse must use all available leave credits.

**SECTION 9. DISCIPLINARY PROCEDURE:**

**A. Drug Procedure**

An employee who tests positive for drugs shall be subject to the following disciplinary procedure, and any such action taken under this procedure shall be documented and made a permanent part of the employee's personnel history folder:

**OFFENSE NO. 1**

Employee immediately suspended for thirty (30) calendar days without pay during which time the employee may not use vacation, sick or personal leave credits. Employees shall immediately be enrolled in an SAP Program. Upon SAP determination of EAP for a period longer than thirty (30) calendar days, the employee shall be allowed to use vacation and personal leave credits. Upon testing negative, in accordance with SAP time line and consultation and employer approval, the employee shall return to work with no further disciplinary action. The employee will be on a probationary period for one (1) year from the date of the positive test result. If at any point during the one (1) year probation the employee tests positive for drugs, the employee will be terminated from service without Civil Service Section 75 rights.

**OFFENSE NO. 2**

An employee who tests positive for drugs upon completion of the one (1) year probationary period shall be suspended without pay for thirty (30) calendar days, during which time the employee shall not be permitted to use vacation, sick or personal leave credits. The employee shall be subject to disciplinary action, including termination pursuant to Section 75 of the Civil Service Law.

## **B. Alcohol Procedure**

An employee who tests positive for alcohol shall be subject to the following disciplinary procedure, and any such action taken under this procedure shall be documented and made a permanent part of the employee's personnel history folder:

### **BAC .02 to less than .04**

#### **OFFENSE NO. 1**

An employee who tests positive with a BAC of .02 to less than .04 shall be suspended from work for a period of 24 hours from the time of the test. The employee can use vacation or personal leave for said offense. A counseling memorandum will be placed in the employee's personnel history folder.

#### **OFFENSE NO. 2**

Pursuant to Section 382.505 of the Regulation, the City and CSEA agrees that the employee shall be immediately suspended for two (2) weeks without pay. Vacation or personal leave can be used by the employee. The employee shall immediately enroll in an SAP Program. No further disciplinary action shall be taken.

#### **OFFENSE NO. 3**

Pursuant to Section 382.505 of the Regulation, the City and CSEA agrees that the employee shall be immediately suspended for thirty (30) calendar days without pay, Section 75 termination charges may be processed.

### **BAC .04 or greater**

#### **OFFENSE NO. 1**

Employee immediately suspended for two (2) weeks without pay. Vacation or personal leave can be used by the employee, who shall immediately enroll in an SAP Program. No further disciplinary action shall be taken.

#### **OFFENSE NO. 2**

Employee immediately suspended for thirty (30) calendar days without pay, without recourse to Section 75 and shall be placed on one (1) year probationary term. The employee shall immediately enroll in an SAP Program. No further action taken.

#### **OFFENSE NO. 3**

If tests positive within one (1) year probationary term, the employee shall be immediately terminated without recourse to Section 75. If the offense occurs after completion of the one (1) year probationary period, the employee shall be immediately suspended for thirty (30) days without pay, during which time the employee may not use vacation, sick or personal leave. The employee shall be subject to termination pursuant to Section 75 of the Civil Service Law.

**SECTION 10.     TESTING COST:**

The employer will pay for all costs associated with pre-employment, post accident, and random testing.

The employee shall pay for all costs after a positive result, including but not limited to return-to-duty and follow-up testing, and costs associated with the SAP program as a result of a positive test. In addition, any split sample costs will be paid for by the employee.

**SECTION 11.     APPEAL OF DISCIPLINARY ACTION:**

If the employee disagrees with the proposed discipline, the employee may exercise the rights provided to the employee under the Collective Bargaining Agreement or statute, as applicable.

**SECTION 12.     SAVINGS CLAUSE:**

In the event that any portion of this procedure should be found to be invalid by a decision of a tribunal of competent jurisdiction, then such specific portion specified in such decision shall be of no force and effect, but the remainder of this procedure shall continue in full force and effect, unless that would lead to unjust or impractical results.



## **APPENDIX B**

### **PERSONNEL AND ORGANIZATIONS ADMINISTERING THE POLICY**

1.     **Drug/Alcohol Program Manager (DAPM)**  
      Phone: 518-762-0574  
      Contact: Edith Pashley, City of Johnstown Personnel Director
  
2.     **Medical Review Officer (MRO)**  
      Phone: 1-800-223-2133  
      Contact: Dr. Susan Green c/o Newport Alliance
  
3.     **Department of Health and Human Services (DHHS)**  
      Primary Laboratory: SmithKline Beecham Clinical Laboratory  
      Secondary Laboratory: SmithKline Beecham Clinical Laboratory (alternate location)
  
4.     **Employee Assistance Program (EAP)**  
      Phone: 518-843-0503
  
5.     **Substance Abuse Professional (SAP)**  
      Phone: 518-843-0503

**Note: The City of Johnstown reserves the right to modify this listing at any time.**



**APPENDIX C**  
**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge that I have received the City of Johnstown CDL Drug & Alcohol Testing Policy.

I understand I may be required to submit to an alcohol and/or drug test.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Employee's Name (printed)



**This acknowledgment shall be retained in the employee's personnel file.**

STAN?

**MEMORANDUM OF AGREEMENT**

January 2004

The City of Johnstown, (City), and the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO, Fulton County Local 818, City of Johnstown Public Works Unit, (Union), are parties to a collective Bargaining Agreement, (Agreement), for the term January 1, 2001 through December 31, 2003.

The Agreement contains a January 15, 1998 Side Agreement which obligated the parties to develop a satisfactory work schedule and related items for the operation of the Water Filtration Plant.

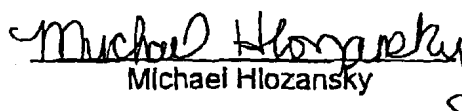
The parties have conducted Labor-Management meetings to revise the Agreement as follows:

1. Both the Operator and Assistant may leave the worksite after four hours of duty on a Saturday or Sunday if all assigned work activities are completed.
2. Holiday pay will be per the Agreement.
3. From the date of this Memorandum of Agreement forward, the standard Monday through Friday forty-hour workweek with alternating weekend overtime coverage will be adhered to.
4. This Memorandum of Agreement shall become effective January 15, 2004 and replaces in total the February 15, 1998 Side Agreement.

For City of Johnstown

  
Robert F. Schultz, Mayor

For CSEA

  
Michael Hlozansky

For Johnstown Water Board

  
Nicholas Canizzo, President